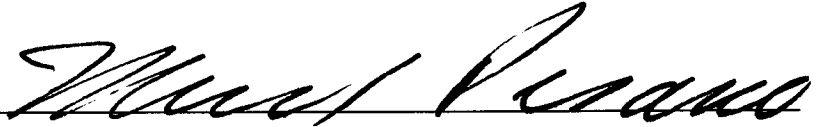


REPORT

DATE: Thursday, June 1, 2006
TO: Administration Committee and Regional Council
FROM: Lambertus Becker, Interim CFO, 213.236.1804, becker@scag.ca.gov
SUBJECT: Adoption of Final Audit Appeal Procedure



EXECUTIVE DIRECTOR'S APPROVAL:



RECOMMENDED ACTION:

Recommends that the Regional Council adopt the Final Audit Appeal Procedure

SUMMARY:

At the April 6, 2006 meeting of the Administration Committee a proposed Internal Audit Appeal Procedure (attached) was considered. Extensive discussion of this issued resulted in a number of proposed changes to the proposal and the Committee referred the matter back to the Audit Committee for further consideration.

BACKGROUND:

There were a number of specific changes that members of the Administration Committee requested be considered. They include:

1. That the subregion should notify SCAG of their intent to appeal within 30 days from receiving the Final Audit from the SCAG Internal Auditor and then have an additional 45 days to actually file the appeal;
2. There should be a mechanism to request and be granted an extension to these dates;
3. The payment provisions should not be included in the Appeal procedure;
4. There should be more external members of the panel and no SCAG staff;
5. The Appeal Panel should include either the President of SCAG or a member of the Executive Committee; and,
6. There should be ability for the subregion to appeal the determination of the Appeal Panel to the Regional Council.

These issues were considered at the Audit Committee meeting of April 19, 2006 and the following actions were recommended.

1. That the subregion would have thirty (30) calendar days to notify SCAG in writing of their intent to appeal and they would have forty-five (45) additional calendar days from the date of notice to actually file their appeal.
2. Provision should be made in the procedure to allow for a one time extension of the dates.
3. Since the repayment of disallowed costs is included in the Continuing Cooperative Agreement with each subregion it should not be included in the appeal procedure.
- (4-6) After much discussion the Audit Committee recommended that the Appeal Panel consist of one (1) external auditing firm that does not conduct SCAG's or the subregion's annual external audit. If the subregion is not satisfied with the determination of the first level appeal they may request within fourteen (14) calendar days a second level review by a different panel comprised of up to three (3)

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individuals. These may include external auditors and legal counsel. It was strongly recommended by the Committee that participation on any appeal panel be based on technical expertise and knowledge of state and federal rules and regulations and that no elected officials sit on any appeal panel.

7. The Audit Committee recommends that the costs of the first level appeal would be paid by SCAG. If the subregion requests a second level review they would pay all costs for that review.
8. The Audit Committee wanted it noted that all internal audits and appeals are subject to possible review by Caltrans and the federal government.
9. There was discussion at the Audit Committee about possibly securing the services of a federal agency, such as the GAO, to conduct these appeal reviews. We have been in contact with two agencies and are awaiting their decision. We will keep the Audit Committee and the Regional Council apprised of our progress in this area.

The attached Internal Audit Appeal Procedure incorporates the input and recommendations from the Audit Committee and has been reviewed by the Subregional Coordinators.

FISCAL IMPACT:

Responsibility for disallowed costs rest on the subregions; and if the subregions are unable to pay, the ultimate responsibility may be with SCAG. The cost of appeal panels will depend upon the number of appeals submitted. The estimated cost could range from \$1,000 - \$2,000 per appeal.

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Internal Audit Appeal Procedure

Background

The Southern California Association of Governments (SCAG) is a recipient of Federal, State and local funds. As recipient of these monies SCAG is subject to numerous regulations and conditions related to the expenditure of those funds and has a fiduciary responsibility to insure that these monies are spent in an appropriate manner. To insure that SCAG complies with all applicable rules and regulations an Internal Audit function was created. This resulted in the establishment of an Audit Committee composed of members of SCAG's Regional Council and the hiring of an Internal Auditor.

The duties of the Internal Auditor include compliance activities related to SCAG's internal activities. Additional duties include conducting "preaward" audits of vendors for contracts that exceed \$250,000 and conducting audits of entities that receive funds through SCAG.

The normal process for an audit of an outside agency (e.g. a subregion) would generally include: a) Notification to the agency about to be audited and agreement to a date to begin the audit; b) field work by the auditor; c) preparation of the draft audit report and distribution to the agency being audited; d) a thirty (30) calendar day period to review and respond to the draft audit by the agency being audited; e) a fourteen (14) calendar day period for the auditor to complete the audit and submit it to the agency being audited and to the SCAG Audit Committee. These dates are general guidelines and may be adjusted with mutual concurrence of the parties involved.

If the agency being audited disagrees with the findings contained in the final audit report they may appeal these findings under limited conditions.

Section 1 - Basis for Appeal

An audit will be considered for appeal under two limited conditions. These conditions are: 1) the audited agency can present new information that was not available at the time of the field work or during the drafting of the audit; and/or, 2) the interpretation and/or application of the rules or regulations is called into question.

It is not the intent of this policy to allow audited agencies the ability to appeal audit findings by merely resubmitting material that had already been considered by the auditor. If the appeal is based on an interpretation of the rules and regulations the appropriate rules and regulations should accompany the appeal and an explanation should also be enclosed explaining the basis for the appeal.

Section 2 - Appeal Panel

The appeal panel will consist of one external auditing firm with expertise in federal and state rules and regulations that does not conduct SCAG's or the subregion's annual external financial audit. Scag will pay the cost of this appeal. If the subregion being audited rejects the findings of this Appeal they may request, in writing within fourteen days, a second level review which will consist of up to three members; and include one or two 1) the General Counsel of SCAG (or other outside counsel); 2) the Deputy Executive Director of SCAG; and, 3) an external auditing firms and one outside counsel with knowledge of federal rules and regulations. The costs of this review will be paid, in advance, by the subregion. (SCAG is attempting to secure the services of a federal agency, such as the GAO, to conduct these appeal reviews but, to date, have not secured a firm commitment. We will keep the Regional Council apprised of any developments in this area.)

Section 3 - Appeal Process

Once an audited agency has received the final audit report from SCAG's ~~Internal~~ SCAG's Internal Auditor they have thirty (30) calendar days to notify the SCAG Chief Financial Officer (CFO) by letter that they plan to appeal.* The appeal must be filed within forty-five (45) calendar days ~~after~~ of the date of the notice of intent to appeal ~~the release of the audit by SCAG.~~ The CFO will then convene the Appeal Panel which has thirty (30) calendar days to review the appeal and make its determination.

~~The Continuing Cooperative Agreements with the subregions indicate that the subregions have thirty (30) calendar days to pay any disallowed costs. During the appeal process the payment of any disallowed costs will be suspended until such time that the appeal is decided. Submittal~~ Any of these dates may be extended by thirty (30) calendar days adjusted based on mutual consent one time by either of the parties.

If the appeal is upheld the audit report from SCAG's Internal Auditor will be amended. If the SCAG Appeal Panel(s) determines that findings of disallowed costs are appropriate the subregion will be invoiced by ~~have thirty (30) calendar days from the date that the final determination is made to either make payment to SCAG in accordance with the Continuing Cooperative Agreement, for those disallowed costs or to agree to a plan of repayment (if permitted by Caltrans and/or FHWA).~~

It should be noted that any audits conducted and appeal findings are subject to possible further review and action by Caltrans and the federal government.

* Any subregion that has had an audit completed prior to adoption of this procedure will have thirty (30) calendar days from the date of adoption of this procedure by the regional Council to appeal findings in their audit in accordance with the timeframes established in Section 3.

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If the agency being audited disagrees with the findings contained in the final audit report they may appeal these findings under limited conditions.

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Once an audited agency has received the final audit report from SCAG's Internal Auditor they have thirty (30) calendar days to notify the SCAG Chief Financial Officer (CFO) by letter that they plan to appeal.* The appeal must be filed within forty-five (45) calendar days after the date of the notice of intent to appeal. The CFO will then convene the Appeal Panel which has thirty (30) calendar days to review the appeal and make its determination. Any of these dates may be extended by thirty (30) calendar days one time by either of the parties.

If the appeal is upheld the audit report from SCAG's Internal Auditor will be amended. If the SCAG Appeal Panel(s) determines that findings of disallowed costs are appropriate the subregion will be invoiced by SCAG in accordance with the Continuing Cooperative Agreement.

It should be noted that any audits conducted and appeal findings are subject to possible further review and action by Caltrans and the federal government.

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